*THE HON'BLE SRI JUSTICE P.S. NARAYANA

+W.P.No.18942 OF 1996

% 05-12-2006

1. Ramesh Prasad and another.

.. Petitioners

And

$ The Sub-Collector, Asifabad, at Asifabad Adilabad District and 2 others

.. Respondents

<GIST:

>HEAD NOTE:

! Counsel for petitioner : Sri Sridhar Reddy

^ Counsel for respondents 1 & 2: G. P. for Revenue (Telangana)

Counsel for respondent No.3 : Sri Ch.Anjaneyulu.

?CASES REFERRED :

1976 (2) (H.C) APLJ 405

THE HON'BLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO.18942 OF 1996

Date: 05-12-2006

Between:

1. RameshPrasad, s/o late Satyanarayana,
   Aged 45 years, R/o Sirpur (v) & (M),
   Adilabad District and another.

... Petitioners.

And

1. The Sub-Collector, Asifabad,
   at Asifabad, Adilabad District
   and 2 others.

... Respondents.

* * *

ORDER:

Heard Sri Sridhar Reddy, learned counsel representing the writ petitioners, learned Government Pleader for Revenue (Telangana) appearing for respondents 1 and 2 and Sri Ch.Anjaneyulu, learned counsel representing the third respondent.

2. Sri Sridhar Reddy, learned counsel representing the writ petitioners would contend that on a reading of nature of the order, which was made by the first respondent dated 12.8.1996, it is crystal clear that the first respondent has no authority or jurisdiction to make such an order since if the third respondent is aggrieved of the mutation of names or otherwise in records of rights or in the event of third respondent asserting his independent rights, the remedy of the third respondent is either to initiate appropriate proceedings under the relevant legislation before the competent authority or to institute a regular suit praying for declaration of rights as the case may be, but definitely not to make

an application of this nature and inviting an order of this nature for which the first respondent is not competent purporting to exercise the powers under Rule 16(5) and (9) of the A.P. Land Reforms (Ceiling on Agricultural Holdings) Rules, 1974 (hereinafter in short referred to as 'the Rules' for the purpose of convenience).

3. Learned Government Pleader for Revenue (Telangana) had taken this court through the contents of counter-affidavit and would submit that in the facts and circumstances well explained both in the impugned order and the counter-affidavit filed by the first respondent, the impugned order does not suffer from any illegality, whatsoever, since this should be taken as an accidental slip or omission or a mistake and hence the first respondent being the competent authority is empowered to rectify the same.

4. Sri Ch. Anjaneyulu, learned counsel representing third respondent had taken this court through the impugned order and would submit that in the facts and circumstances of the case inasmuch as the present writ petitioners, who were the contesting respondents before the first respondent, had failed to produce any documents relating to the alleged sale, the first respondent had arrived at correct conclusion in ordering deletion of the names of the existing pattadar Smt.P.Vanajakshamma from the pattadar's column of the pahani and further directing to enter the name of the third respondent in the present writ petition. The learned counsel also made elaborate submissions relating to several factual controversies and would assert that all these proceedings under which shelter is being taken now by the writ petitioners are only

paper transactions and never the family of the petitioners had been in possession and possession continues to be with the family of the third respondent and the third respondent alone.

5. The writ petition is filed for a writ of Mandamus or any other appropriate relief for setting aside the order dated 12.8.1996 passed in Rc.No.LR/E/786/96 on the file of the first respondent while declaring the same as illegal, arbitrary and without jurisdiction and to pass such other suitable orders.

6. This Court issued Rule Nisi on 10.9.1996 and also granted interim suspension.

7. It is stated that the writ petitioners are the owners and possessors of the lands in survey No.571, admeasuring Ac.7-98 cents situated at Sirpur Taluk, Adilabad District, and the above said property was acquired by their father during his life time during the year 1959 having purchased the same from the grandfather of the third respondent and thus from 1959 onwards the family of the petitioners alone has been in actual possession and enjoyment of the same and the revenue entries also had been mutated. After death of the petitioners' father, the name of their mother had been recorded in the revenue records. It is also stated that the third respondent never claimed the said property at any point of time and in fact their father had shown the above said land to his holding when he had filed his declaration under A.P. Land Reforms (Ceiling on Agricultural Holdings) Act, 1973 (hereinafter in short referred to as 'the Act' for the purpose of convenience). It is also stated that initially the said land was taken over possession

by the government as surplus land, but in view of the benefit given under Section 4-A of the Act of aforesaid,

re-determination was made and an order dated 26.8.1985 was passed by the authorities under the Act reverting the said land to the holding of their late father, and thus, the same was reverted in the year 1985 and from the said time onwards the family of the petitioners alone has been in possession of the same. It is also further stated that the third respondent seems to have made an application before the first respondent by stating that the land originally belonged to his grandfather and hence inasmuch as the patta was wrongly transferred or mutated in favour of the father of the petitioners, a relief for change of patta and for restoration of possession had been prayed for. It is also stated that the order impugned in the present writ petition was made in exercise of powers said to have been exercised by the first respondent under Rule

16 (5)(9) of the Rules referred to supra. The said impugned order is questioned principally on the ground of jurisdiction of the first respondent to make such an order.

8. The first respondent filed counter-affidavit wherein several factual details had been narrated. Specific stand is taken that the present writ petitioners had not produced any evidence relating to the purchase of land by the petitioners' family from the grandfather of the respondent No.3 during enquiry. Further specific stand is taken that the land in survey No.517 an extent of 7-39 guntas situated at Sirpur-T village and mandal was the patta land of late Cherla Narsa, grandfather of the third respondent who continued

as pattadar till the year 1976-77. Further, it was stated that P.Satyanarayana, father of the writ petitioners had shown the said land in declaration in CC No.S/1717/75, under the Act when the said land was not a patta land of the declarant. It is also stated that the extent of the said land was computed in the holding and the declarant declared as surplus landholder to the extent of 0.2620 SH. Vide L.R.T. Asifabad Proceedings No.CC/S/1717/75, dated 13.9.1996. It is also further stated that the declarant surrendered the land on 04.10.1976, which was accepted and assigned to the landless poor persons Hanjiru Lingaiah and Madavi Bhimaiah. Several other factual details are also narrated. It is stated that subsequent thereto the father of the writ petitioners-declarant was declared as non-surplus landholder under Section 4-A of the amended Act, Act 10 of 1977, dated 06.6.1978 and an order reverting back the land was made in J/3047/85 dated 26.8.1985. Several other factual details had been narrated relating to the illiteracy of the family of the third respondent and certain other aspects. The details relating to revenue entries made; and when they were mutated? and further particulars also had been narrated. Hence, it is stated that in the facts and circumstances, inasmuch as an enquiry was conducted in accordance with law, the impugned order was made.

9. The third respondent filed W.V.M.P.No.257 of 1998 and a counter-affidavit was filed averring that the father of the writ petitioners had shown the land in question in declaration illegally alleging as though he was pattadar of the said lands. It is also stated that the father of the petitioners cultivated the land for some

time on ‘kowl’ basis and further stand was taken that the grandfather of the third respondent never sold the land at any point of time to the father of the writ petitioners. All other aspects had been denied and further specific stand is taken about powers conferred under Rule

16 (5)(9) of the Rules referred to supra the first respondent is competent to make such an order. Rule 16 of the Rules deals with nature of proceedings before the Tribunal. Rule 16 (5)(9) of the Rules, which may be relevant for the present purpose read as hereunder.

> 16. Nature of proceedings before the Tribunal:-
> (5) The Revenue Divisional Officer, the District Collector, Tribunal and the Appellate Tribunal shall have the power:-
>
> (a) to make orders incidental or ancillary to the decision of such officer or authority;
>
> (b) to correct any clerical or arithmetical mistakes in judgments or errors arising therein from any accidental slip or omission, either of its own motion or on the application of the parties. (substituted as per G.O.Ms.No.403 dated 6.4.1976)
>
> (9) Every notice or summons issued or order passed by the Tahsildar, Revenue Divisional Officer, District Collector, Tribunal or Appellate Tribunal, as the case may be, shall be served or communicated to the persons concerned either by personal delivery to him or where the above course is not feasible, by sending it by post under the certificate of posting to his address at the last known place of residence:
>
> Provided that where a notice, summons or order is

> sent under the certificate of posting, it shall be deemed to have been served on such person on the date on which it would, in the usual course of post, be received by the addressee."

10. Reliance was also placed on a decision of this Court in **Ankam Reddy Yerrayyamma V. The Authorised Officer, (Land Reforms) Narasipatnam, Visakhapatnam District**[1] wherein it was held that in view of the amended Rule 16 (5)(b), the language of which is similar to Section 152 of the Civil Procedure Code, any mistake which had crept into the declaration of the holding of the declarant or the excess area over the ceiling limit by the Tribunal on account of any accidental slip or omission by the declarant can be corrected.

11. On a careful reading of Rule 16 (5)(9) of the Rules and also taking into consideration the provisions of the Act referred to supra and further taking into consideration the respective stands taken by the parties and also the impugned order made by the first respondent, this Court is of the considered opinion that in the facts and circumstances, especially, in the light of the fact that the same was declared as surplus, allotted to certain third parties and subsequent thereto by exercise of powers under Section 4-A of the Act, the same was reverted to the original owner, cannot be said to be just an accidental slip so as to be rectified or corrected by exercising the powers by invoking the specified sub-rules of Rule 16 specified above. Hence, this Court is satisfied that the impugned order made by the first respondent is without jurisdiction and it is needless to say that consequently the same is liable to be

set aside.

12. The writ petitioners are bound to succeed and accordingly the writ petition is hereby allowed. However, in the light of the peculiar stand taken by the third respondent it is made clear that liberty is given to the third respondent to invoke jurisdiction of the competent authority, if the third respondent is aggrieved of the wrong mutation under the relevant legislation or the third respondent also is at liberty to agitate his rights by instituting a regular civil suit in a competent civil court, if the third respondent is so advised. Except giving this liberty, nothing else can be done and this liberty is being given in the light of the specific stand taken by the first respondent and also third respondent as well in the respective counter-affidavits.

13. Subject to the above liberty, the writ petition is hereby allowed. No costs.

_____

P.S.NARAYANA, J.

Date: 05th December 2006.
L.R. Copy to be marked.
BSB

---

[1] 1976 (2) (H.C) APLJ 405